

MELVIN D. GUTTMAN

IBLA 80-484

Decided October 31, 1980

Appeal from decision of New Mexico State Office, Bureau of Land Management, denying petition for reinstatement and holding oil and gas lease NM 29430 to have terminated.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals --
Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Coral Springs, Florida, 2 days before it is due in Santa Fe, New Mexico, does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

In order for the failure to make timely payment of the rental justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. Traveling away from home during the latter part of September when payment is due October 1 will not justify late payment.

APPEARANCES: Melvin D. Guttman, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Melvin D. Guttman appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated February 22, 1980, denying reinstatement of oil and gas lease NM 29430, and holding that lease to have terminated. The lease terminated automatically by operation of law when appellant failed to pay the annual rental on or before the anniversary date of the lease.

The anniversary date of the lease was October 1, 1979. Appellant's rental was not received by BLM in Santa Fe, New Mexico, until October 3, 1979. BLM notified appellant that the lease had terminated for failure to pay the rental in a timely manner.

Appellant petitioned for reinstatement of the lease stating that:

I have no legitimate excuse as to the delay in sending the annual rental other than the fact I was out of town the last part of September and was delayed unexpectedly. I sent the annual rental as soon as I arrived back in Florida hoping that over the weekend the check would arrive Monday morning the first.

BLM issued its decision denying reinstatement because it found that the lessee had not satisfactorily complied with the requirements for reinstatement as provided by 43 CFR 3108.2-1(c).

In his statement of reasons appellant reiterates his reasons set forth before BLM seeking reinstatement and asks that his petition be accepted because he posted the rental before the lease expired.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

[2] Reasonable diligence requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Appellant's rental payment was due on October 1, 1979. Mailing the rental payment in Coral Springs, Florida, 2 days before it is due in Santa Fe, New Mexico, does not constitute reasonable diligence. The Board has considered this situation many times and has repeatedly held that mailing the rental 2 days before the due date does not constitute reasonable diligence. Bob W. Scott, 46 IBLA 254 (1980); Norman C. Stroink, 44 IBLA 188 (1980); Reynolds Mining Corp., 39 IBLA 405 (1979); Helen Bacha, 39 IBLA 146 (1979); L. J. Arrieta, 26 IBLA 188 (1976); William N. Cannon, 20 IBLA 361 (1975).

[3] Appellant's failure to make timely payment is not justified by the fact that he was traveling away from home during the latter part of September. In order for the failure to pay the rental timely to be justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. Melbourne Concept Profit Sharing Trust, 46 IBLA 87 (1980); Robert H. Schnurbusch, 44 IBLA 229 (1979); Emma Pace, 35 IBLA 143 (1978). A trip, whether for business or pleasure, is not a circumstance ordinarily beyond an individual's control, and it does not ordinarily prevent a diligent individual from making payment or arranging for others to make payment in his absence. Lloyd M. Patterson, 34 IBLA 69, 71 (1978); Hildred W. Bernthal, 30 IBLA 18 (1977); Charles C. Sturdevant, 20 IBLA 280 (1975).

Accordingly, as we have determined that appellant did not exercise reasonable diligence in mailing his rental and did not show that failure to make timely payment was justifiable, his petition for reinstatement was properly denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

